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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

CITY OF YONKERS,

Plaintiff,

v.

12 HYUNDAI MOTOR AMERICA and  
13 KIA AMERICA, INC.,

Defendants.

No. 8:23-cv-01182

COMPLAINT

JURY TRIAL DEMANDED

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	JURISDICTION AND VENUE.....	4
III.	PARTIES.....	5
A.	Plaintiff.....	5
B.	Defendants .....	5
IV.	THE KIA HYUNDAI THEFT WAVE .....	6
A.	Without Immobilizers, Defendants’ Vehicles Are Sitting Ducks.....	6
B.	Car Thefts Imperil Public Safety .....	10
C.	Measures to Prevent Vehicle Theft Have Existed for Over a Century.....	22
D.	The Widespread Adoption of Modern Engine Immobilizers as an Even More Effective Vehicle Theft Deterrent .....	27
E.	Defendants’ Deviation from the Industry Standard .....	29
V.	CAUSES OF ACTION .....	32
	COUNT ONE — COMMON LAW PUBLIC NUISANCE .....	32
	COUNT TWO — NEGLIGENCE.....	34
VI.	PRAYER FOR RELIEF.....	38
VII.	DEMAND FOR JURY TRIAL.....	39

## I. INTRODUCTION

1. There is an inextricable link between preventing vehicle theft and protecting public safety. Making sure cars are not easy to steal protects both property and the public by keeping dangerous drivers in stolen vehicles off the roads. This case is a clear example of what happens to public safety when car manufacturers choose not to include standard anti-theft technology in their vehicles.

2. The days of “hotwiring” cars with nothing more than a screwdriver are largely over: in most recent cars, the ignition key emits a radio signal that, when the key is present, prompts a computer to disengage an immobilizer device and allows the car to start and move. But recent Hyundai and Kia models are a glaring exception.

3. Between 2011 and 2022, long after other carmakers adopted immobilizer technology that ensured car ignitions could not be started without their keys, Hyundai and Kia failed to keep up with the times. As a result, TikTok and news videos demonstrate the relative ease with which Hyundai and Kia vehicles can be stolen. In many cases, thieves use tools no more advanced than a USB cable. Hyundai’s and Kia’s business decisions to reduce costs, and thereby boost profits, by foregoing common anti-theft technology have resulted in an epidemic of thefts. This vehicular crime wave has had a significant impact on law enforcement operations and public safety, particularly in the City of Yonkers.

4. In the 1960s and 1970s, all that was needed for a successful vehicle heist was a little brute force (to crack open the ignition column) and a key-shaped object to start the car and drive off within seconds. Thanks to modern technology, this is no longer the case for most cars. Hyundai and Kia are nearly unique among

1 automobile manufacturers in failing to install vehicle immobilizers in most of their  
2 cars. This is not because the technology is somehow beyond them—in fact, Hyundai  
3 and Kia vehicles sold in the European and Canadian markets incorporate vehicle  
4 immobilizers, because regulations there expressly require them. It is only in the  
5 United States that Hyundai and Kia have decided to trade public safety for profits.

6 5. The difference between the proportion of Hyundai and Kia vehicle  
7 models with immobilizers compared to all other manufacturers is staggering: only  
8 26% of 2015-model Hyundai and Kia vehicles in the U.S. had immobilizers,  
9 compared to 96% of vehicles from all other manufacturers.<sup>1</sup>

10 6. Hyundai's and Kia's decision to put cost-savings and profits over  
11 public safety has had devastating consequences for the City of Yonkers and its  
12 residents, as it has for other cities. The failure of Defendants to install an industry-  
13 standard anti-theft device, notwithstanding decades of academic literature and  
14 research supporting the deterrent effects of such technology, has opened the  
15 floodgates to vehicle theft, crime sprees, reckless driving, and public harm.

16 7. This epidemic started in Milwaukee before spreading nationwide. By  
17 June 2021, the Milwaukee Police Department reported that the theft of Hyundai and  
18 Kia vehicles had increased by 2,500% since the previous year, with an average of  
19 sixteen cars being stolen per day.<sup>2</sup>

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21 <sup>1</sup> *Hyundai and Kia theft losses*, 38 HLDI BULLETIN 28 (December 2021),  
22 available at: [https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi\\_bulletin\\_38-28.pdf](https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf).

23 <sup>2</sup> James Gilboy, *Why Milwaukee Might Sue Hyundai, Kia Over Stolen Car Epidemic*, THEDRIVE.COM (Dec. 11, 2021, 11:15 AM),

1           8.     The same trend is evident in the City of Yonkers (“Yonkers” or the  
2 “City”), where, between December 2022 and May 2023, there has been a 1,575%  
3 increase in incidents involving stolen Hyundai and Kia vehicles when compared to  
4 the number of similar incidents between December 2021 and May 2022.

5           9.     Vehicle theft is not only a property crime affecting vehicle owners, but  
6 it also constitutes a grave threat to public safety. Vehicle theft often goes hand in  
7 hand with reckless driving, which in turn results in injuries and death. It results in  
8 increased violence, as many car owners are unlikely to part with their vehicles  
9 willingly. It consumes scarce law enforcement resources and deprives the public of  
10 safe streets and sidewalks.

11           10.    In a recent letter issued to the National Highway Traffic Safety  
12 Administration, eighteen Attorneys General, including New York Attorney General  
13 Letitia James, raised concern over this very issue, noting the downstream  
14 consequences that unsafe Hyundai and Kia vehicles have created for local  
15 governments around the country:

16                   The high rate of theft of Hyundai and Kia vehicles has  
17 demanded time and resources from public safety agencies,  
18 diverting resources from other priorities. Thefts reported  
19 to law enforcement require documentation and  
20 investigation, and crashes of stolen vehicles require  
emergency responder services. In addition to responding  
to Hyundai and Kia vehicle thefts and related crashes or  
crimes, local agencies have also had to allocate scarce  
resources to preventative measures.<sup>3</sup>

21  
22 <https://www.thedrive.com/news/43454/why-milwaukee-might-sue-hyundai-kia-over-stolen-car-epidemic>.

23 <sup>3</sup> Letter from Attorneys General to Ann Carlson, Acting Administrator of the  
National Highway Traffic Safety Administration 4 (Apr. 20, 2023),

1           11. The skyrocketing rate of vehicle theft in Yonkers has drastically  
2 impacted City resources, including its police resources. Yonkers residents are  
3 subjected to the increasingly dangerous conditions on their city streets, as car thieves  
4 (many of them teenagers) take advantage of Hyundai's and Kia's failures and engage  
5 in reckless driving, endangering City residents and their property.

6           12. Defendants' conduct has created a public nuisance that could have been  
7 avoided had they simply followed industry-wide standards and installed immobilizer  
8 devices, or an equivalent anti-theft device, in all their vehicles.

9           13. To date, Hyundai and Kia refuse to accept responsibility, forcing  
10 municipalities across the country, including Yonkers, to divert funds and risk officer  
11 safety to combat the rising burden caused by increased Hyundai and Kia vehicle  
12 theft and reckless driving on city streets.

## 13                           **II. JURISDICTION AND VENUE**

14           14. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
15 § 1332(a), as the amount in controversy exceeds \$75,000 and there is complete  
16 diversity between the parties. The City of Yonkers is regarded as a citizen of the  
17 state of New York, for the purposes of diversity jurisdiction. *Bullard v. City of Cisco,*  
18 *Texas*, 290 U.S. 179, 187 (1933). Defendants are citizens of California, where they  
19 are headquartered and incorporated.

20           15. This Court has general personal jurisdiction over Defendants as they  
21 are incorporated and headquartered in the state of California.

22                           [https://oag.dc.gov/sites/default/files/2023-](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf)  
23 [04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.p](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf)  
[df](https://oag.dc.gov/sites/default/files/2023-04/AG%20Multistate%20Letter%20to%20NHTSA%204.20.2023%20%281%29.pdf) ("Letter from Attorneys General to NHTSA").



#### IV. THE KIA HYUNDAI THEFT WAVE

##### A. Without Immobilizers, Defendants' Vehicles Are Sitting Ducks

20. As described further below, Kia and Hyundai have chosen to flout the industry standard of utilizing an engine immobilizer in many of their vehicles, which made those vehicles more susceptible to theft. Specifically, upon information and belief, at all relevant times, Defendants designed, manufactured, and distributed the following automobile models (“Susceptible Vehicles”) without engine immobilizers between 2011 and 2022: Hyundai Accent, Elantra, Elantra GT, Elantra Coupe, Elantra Touring, Genesis Coupe, Kona, Palisade, Santa Fe, Santa Fe XL, Santa Fe Sport, Sonata, Tucson, Veloster, Venue, and Veracruz; and the Kia Forte, K5, Optima, Rio, Sedona, Seltos, Sorento, Soul, and Sportage. As would-be car thieves learned of this susceptibility, the incidence of theft for Susceptible Vehicles increased, relative to other models, from 2015 to 2020.<sup>4</sup>

21. However, this progression became an explosion in late 2020, when a group of teenagers began posting “how-to” videos detailing how simple it was to

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<sup>4</sup> See *NICB's Hot Wheels: America's 10 Most Stolen Vehicles*, NICB (Aug. 1, 2016), <https://www.nicb.org/sites/files/2017-11/2015-Hot-Wheels-Report.pdf>; *NICB's Hot Wheels: America's 10 Most Stolen Vehicles*, NICB (July 12, 2017), <https://www.nicb.org/sites/files/2017-11/2016-Hot-Wheels-Report.pdf>; *America's 10 Most Stolen Vehicles*, NICB (Sept. 18, 2018), <https://www.nicb.org/news/news-releases/2017-hot-wheels-report>; *America's 10 Most Stolen Vehicles*, NICB (Nov. 19, 2019), <https://www.nicb.org/sites/files/2020-01/2018%20Hot%20Wheels%20Report.pdf>; *America's 10 Most Stolen Vehicles*, NICB (Oct. 13, 2020), <https://www.nicb.org/HotWheels2019>; and *America's 10 Most Stolen Vehicles*, NICB (Oct. 12, 2021), <https://www.nicb.org/news/news-releases/nicb-releases-annual-hot-wheels-report-americas-top-ten-most-stolen-vehicles>.



1 steal Susceptible Vehicles.<sup>5</sup> That group, the “Kia Boyz,” became notorious for  
 2 posting videos of youth engaging in reckless driving after stealing Kias and  
 3 Hyundais.<sup>6</sup> As the videos detailed, a thief need only remove the plastic cowl under  
 4 the steering column and use a USB cable to start these unsecure cars.

5 22. What followed was all too predictable: thefts of Kias and Hyundais  
 6 skyrocketed.<sup>7</sup> In the first half of 2021, the number of stolen Kias and Hyundais in  
 7 Milwaukee increased by more than thirty and fifteen times, respectively, when  
 8 compared to the same period in 2020.<sup>8</sup> This dramatic increase was unique to Kias  
 9 and Hyundais, which represented 66% of all cars stolen in that period, compared to  
 10 only 6% of stolen cars in 2019.<sup>9</sup> This trend then spread nationwide.

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11  
 12 <sup>5</sup> Greg Rosalsky, *Someone stole my truck. I got a crash course on*  
 13 *the wild black market for stolen cars*, NPR (Aug. 23, 2022, 6:30 AM),  
 14 [https://www.npr.org/sections/money/2022/08/23/1118457271/someone-stole-my-](https://www.npr.org/sections/money/2022/08/23/1118457271/someone-stole-my-truck-i-got-a-crash-course-on-the-wild-black-market-for-stolen-)  
 15 [truck-i-got-a-crash-course-on-the-wild-black-market-for-stolen-](https://www.npr.org/sections/money/2022/08/23/1118457271/someone-stole-my-truck-i-got-a-crash-course-on-the-wild-black-market-for-stolen-)

16 <sup>6</sup> Chris DiLella & Andrea Day, *TikTok challenge spurs rise in thefts of Kia,*  
 17 *Hyundai cars*, CNBC (Sept. 9, 2022, 9:11 PM),  
 18 [https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-](https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html)  
 19 [hyundai-cars.html](https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html).

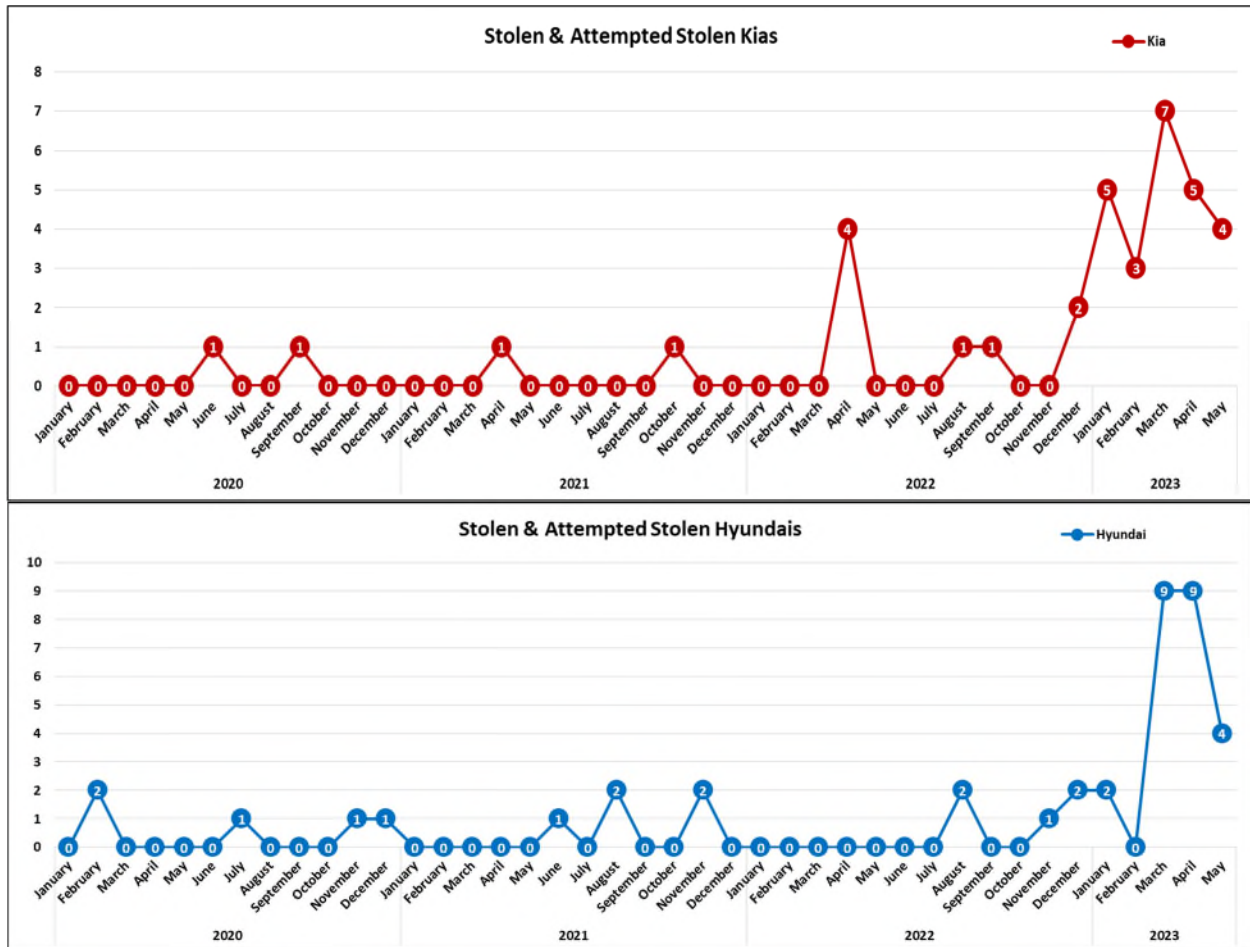
20 <sup>7</sup> *Videos Show Teens How to Steal Certain Kias and Hyundais With*  
 21 *Only a USB Cable, Police Warn Amid Rising Thefts*, INSIDE EDITION (Aug. 10,  
 22 2022, 1:51 PM), [https://www.insideedition.com/videos-show-teens-how-to-steal-](https://www.insideedition.com/videos-show-teens-how-to-steal-certain-kias-and-hyundais-with-only-a-usb-cable-police-warn-amid-)  
 23 [certain-kias-and-hyundais-with-only-a-usb-cable-police-warn-amid-](https://www.insideedition.com/videos-show-teens-how-to-steal-certain-kias-and-hyundais-with-only-a-usb-cable-police-warn-amid-)

<sup>8</sup> Sean Tucker, *Milwaukee Police Report Hyundais, Kias Stolen in Record*  
*Numbers*, KELLEY BLUE BOOK (Dec. 14, 2021, 5:27 PM),  
[https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-](https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/)  
[record-numbers/](https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/).

<sup>9</sup> Matt Posky, *Summer of Theft Creating Bad Publicity for Hyundai, Kia*, THE  
 TRUTH ABOUT CARS (Sept. 20, 2022 2:36 PM),  
[https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-](https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971)  
[publicity-for-hyundai-kia-44496971](https://www.thetruthaboutcars.com/cars/kia/summer-of-theft-creating-bad-publicity-for-hyundai-kia-44496971); Jeramey Jannene, *Two-Thirds of All*  
*Milwaukee Auto Thefts Are Kia and Hyundai Vehicles*, URBAN MILWAUKEE (July

23. Between January and May 2023, Yonkers police reported a 1,100% increase in stolen and attempted stolen Hyundai and Kia vehicles over the same period in 2022.

24. The graphs below illustrate the recent surge in thefts.



25. The surge in thefts has caused Yonkers law enforcement officers to spend more and more of their time responding to stolen Hyundai and Kia vehicles. Between January 1, 2020, and May 31, 2023, Yonkers police officers have spent an estimated 322 hours responding to the scene of auto-theft related incidents involving

24, 2021, 4:29 PM), <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/>.

Hyundai and/or Kia vehicles. In addition, this required an estimated 97 hours of supervision from the Field Services Bureau, providing guidance and direction to patrol officers and certifying related police reports. Furthermore, an additional 198 hours were dedicated to investigative work by Detectives from the Investigations Bureau and Auto-Theft Unit. Additionally, members of the Support Services Bureau have spent an estimated 30 hours tracking these crimes and developing strategies to curtail them. The rampant thefts have placed a tremendous strain on the Yonkers Police Department as a whole, due to time being diverted from other important duties.

26. As thefts of Hyundai and Kia vehicles skyrocketed in Yonkers, so too did officer time spent recovering and attempting to recover these stolen vehicles. So far in 2023, the Yonkers Police Department has recovered more stolen Hyundai and Kia vehicles than in 2020–2022 *combined*. This work, while critical, necessarily diverts officer time from other important duties, not to mention the time other bureaus spend investigating and prosecuting these crimes.

Recovered Stolen Hyundais & Kias					
	2020	2021	2022	2023 YTD	Total
Hyundai	4	4	4	21	33
Kia	0	2	4	18	24
Grand Total	4	6	8	39	57

*\*Recovered data includes Kias & Hyundais stolen from Yonkers and recovered in Yonkers or any other jurisdiction as well as Kias & Hyundais recovered in Yonkers stolen from other jurisdictions*

27. The susceptibility of Defendants' vehicles to theft enabled this spiraling epidemic. Defendants' choice to deviate from the industry standard of utilizing engine immobilizers, placing profits over people and safety, was both a proximate and but-for cause of this outbreak. As a Milwaukee police sergeant described the

1 problem, Defendants' cars are simply too easy to steal.<sup>10</sup> This presents a risk not only  
 2 for property damage, but to public safety, as thieves often engage in reckless driving,  
 3 as well as other dangerous criminal conduct, including robbery, burglary, and  
 4 firearm thefts. Specifically, Kias and Hyundais have been targeted by thieves  
 5 seeking weapons (and other valuables) that might have been left in patrons'  
 6 vehicles.<sup>11</sup>

7 28. Although the majority of stolen Hyundai and Kia vehicles in Yonkers  
 8 have eventually been recovered by police officers, Hyundai and Kia owners  
 9 nationwide report having to wait months for repairs to be made to their cars.<sup>12</sup>

#### 10 **B. Car Thefts Imperil Public Safety**

11 29. Car thefts imperil public safety. By creating a rash of car thefts,  
 12 Defendants are responsible for a substantial risk to public safety.

13 30. This is the conclusion drawn by the National Highway Traffic Safety  
 14 Administration ("NHTSA"). Operating under what was formerly known as the  
 15

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16 <sup>10</sup> Rebecca Klopff, *MPD: Hyundai and Kia vehicles too easy to steal, leading to*  
 17 *spike in car thefts*, TMJ 4 (Feb. 3, 2021, 4:40 PM),  
 18 [https://www.tmj4.com/news/local-news/mpd-hyundai-and-kia-vehicles-too-easy-](https://www.tmj4.com/news/local-news/mpd-hyundai-and-kia-vehicles-too-easy-to-steal-leading-to-spike-in-car-thefts)  
 19 [to-steal-leading-to-spike-in-car-thefts.](https://www.tmj4.com/news/local-news/mpd-hyundai-and-kia-vehicles-too-easy-to-steal-leading-to-spike-in-car-thefts)

20 <sup>11</sup> In one instance, a 2017 Hyundai Sonata owned by the Department of Homeland  
 21 Security was stolen in broad daylight. *See* Jim Piwowarczyk, *Department of*  
 22 *Homeland Security Hyundai Stolen in Milwaukee, Contained Rifle & Body Armor*,  
 23 *WISCONSIN RIGHT NOW* (Apr. 17, 2022),  
<https://www.wisconsinrightnow.com/homeland-security-hyundai/>.

<sup>12</sup> Sheyanne Walker, *Wave of Kia thefts causing parts shortage, some car owners*  
 waiting months for repairs, ABC News 4 (Apr. 24, 2023, 9:39 AM),  
[https://abcnews4.com/news/nation-world/some-kia-hyundai-owners-waiting-](https://abcnews4.com/news/nation-world/some-kia-hyundai-owners-waiting-months-for-repairs-on-vehicles-that-were-stolen-thieves-significant-damage-lost-money-deductible-high-demand-lack-of-parts)  
[months-for-repairs-on-vehicles-that-were-stolen-thieves-significant-damage-lost-](https://abcnews4.com/news/nation-world/some-kia-hyundai-owners-waiting-months-for-repairs-on-vehicles-that-were-stolen-thieves-significant-damage-lost-money-deductible-high-demand-lack-of-parts)  
[money-deductible-high-demand-lack-of-parts.](https://abcnews4.com/news/nation-world/some-kia-hyundai-owners-waiting-months-for-repairs-on-vehicles-that-were-stolen-thieves-significant-damage-lost-money-deductible-high-demand-lack-of-parts)

1 National Traffic Safety Bureau, NHTSA promulgated Federal Motor Vehicle Safety  
2 Standard 114 to reduce the instances of car theft, because “stolen cars constitute a  
3 major hazard to life and limb on the highways.”<sup>13</sup> NHTSA concluded that the  
4 “evidence shows that cars operated by unauthorized persons are far more likely to  
5 cause unreasonable risk of accident, personal injury, and death than those which are  
6 driven by authorized individuals.”<sup>14</sup> The NHTSA Administrator concluded that “a  
7 reduction in the incidence of auto theft would make a substantial contribution to  
8 motor vehicle safety,” by reducing both injuries and deaths to would-be car thieves,  
9 and by “protect[ing] the many innocent members of the public who are killed and  
10 injured by stolen cars each year.”<sup>15</sup>

11 31. Sadly, the reverse is true as well. An *increase* in the incidence of  
12 automobile theft results in a substantial decrease in public safety. Defendants’  
13 pursuit of profits over theft-prevention led to a meteoric rise in automobile thefts,  
14 and the concomitant threats to public safety. Car theft results in reckless driving,  
15 which poses a risk to both the operators of the stolen vehicle and any lawful users of  
16 the public thoroughfare who are unfortunate enough to cross paths.

17 32. Reckless driving impacts the comfortable enjoyment of life, health, and  
18 safety of others within Yonkers. Distinct from many instances of car theft, where the  
19 object is converting the stolen vehicle, the viral recent wave of Hyundai and Kia  
20 thefts often involves teenagers joyriding, posting videos of themselves driving  
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22 <sup>13</sup> See Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars,  
23 33 Fed. Reg. 6,471 (April 27, 1968).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

1 recklessly, and then abandoning the stolen vehicles—often after collisions—during  
2 busy hours of the day.

3 33. Social media platforms like TikTok and Instagram are rife with  
4 examples of this dangerous conduct. Videos posted on these platforms highlight the  
5 very real danger from this phenomenon, including youth joyriding through school  
6 zones or even through crowds of students, and drivers hitting other cars and then  
7 running from the scene.<sup>16</sup> Many of these juveniles range in age between twelve and  
8 fourteen years old, meaning they are not even eligible to have a driving permit or  
9 license and have no experience behind the wheel of a car.

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19 <sup>16</sup> See e.g., @mixtapetrappers\_, Instagram (Oct. 19, 2021),  
20 [@monloww\\_](https://www.instagram.com/p/CVNhJg9D64B/?utm%20medium=copy%20link), TikTok (Oct. 10, 2022),  
21 [https://www.tiktok.com/@monloww\\_/video/7153012228067773738](https://www.tiktok.com/@monloww_/video/7153012228067773738);  
22 @414hypehouse, Instagram (Aug. 19, 2021),  
23 <https://www.instagram.com/p/CSwsnhfAkd/>; @414hypehouse, Instagram (Sept.  
10, 2021), <https://www.instagram.com/p/CTqCaYTANaC/>; and @414hypehouse,  
Instagram (Oct. 20, 2021), <https://www.instagram.com/p/CVRCcU5AkWt/>.



1           34. In the state of New York, the surge in stolen Hyundai and Kia thefts  
2 has also led to devastating and fatal accidents. In October 2022, a 16-year-old  
3 individual driving a stolen Kia Sportage crashed the vehicle near the intersection of  
4 Routes 33 and 198 in Buffalo.<sup>17</sup>



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15           35. All five passengers of the October 2022 Buffalo crash were ejected  
16 from the vehicle, three of whom were pronounced dead at the scene.<sup>18</sup> Another  
17 passenger later died at the hospital, and the remaining passenger and driver sustained  
18 serious injuries. The four passengers who died were all between the ages of fourteen  
19  
20

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21 <sup>17</sup> Aidan Joly & Evan Anstey, *Four teens killed in rollover crash in Buffalo, two*  
22 *injured*, ROCHESTERFIRST.COM (Oct. 25, 2022, 12:26 PM),  
23 <https://www.rochesterfirst.com/crime/police/four-teens-killed-in-crash-at-33-and-198/>.

<sup>18</sup> *Id.*

1 and nineteen.<sup>19</sup> The 16-year-old driver faces four counts of second-degree  
2 manslaughter, among other charges.<sup>20</sup>

3 36. Another example of this all-too-common tragedy occurred in  
4 Milwaukee in June 2021, when a 16-year-old was killed after he stole a Kia Sportage  
5 and collided with another car.<sup>21</sup> His two 12-year-old accomplices were also seriously  
6 injured, as were three passengers in the car that he struck. The images and dashcam  
7 footage<sup>22</sup> of this tragedy show how the epidemic of vehicle theft imperils the public.

8 37. Police officers responding to vehicle thefts and other crimes stemming  
9 from those same thefts also face serious safety threats. This was illustrated recently,  
10 on December 29, 2022, when a Rochester police officer responded to a reported theft  
11 at a gas station convenience store as the suspect was attempting to flee.<sup>23</sup> When the

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12 <sup>19</sup> Graeme Massie, *Car crash that killed four teens is linked to 'Kia Challenge'*  
13 *TikTok craze, Buffalo police say*, THE INDEPENDENT (Oct. 25, 2022, 9: 38 PM),  
14 <https://www.independent.co.uk/news/world/americas/crime/buffalo-teen-crash-tiktok-kia-challenge-b2210473.html>.

15 <sup>20</sup> Maki Becker, *Teen in stolen Kia crash that killed 4 must wear ankle monitor,*  
16 *report to probation*, THE BUFFALO NEWS (Dec. 11, 2022),  
17 [https://buffalonews.com/news/local/crime-and-courts/teen-in-stolen-kia-crash-that-killed-4-must-wear-ankle-monitor-report-to-probation/article\\_030d8c44-56e8-11ed-a8c0-b77671ebf054.html](https://buffalonews.com/news/local/crime-and-courts/teen-in-stolen-kia-crash-that-killed-4-must-wear-ankle-monitor-report-to-probation/article_030d8c44-56e8-11ed-a8c0-b77671ebf054.html).

18 <sup>21</sup> *Teen driving stolen car killed in head-on crash, 5 others injured*, WISN 12 (Jun.  
19 16, 2021, 5:32 PM), <https://www.wisn.com/article/teen-car-theft-suspect-killed-in-head-on-crash-5-others-injured/36741640>.

20 <sup>22</sup> Caroline Reinwald, *Dashcam video shows fatal crash moments after police*  
21 *cancel pursuit*, WISN 12 (Oct. 13, 2021, 11:00 PM),  
22 <https://www.wisn.com/article/dashcam-video-shows-fatal-crash-moments-after-police-cancel-pursuit/37955614>.

23 <sup>23</sup> Hailie Higgins, *Watch: RPD officer dragged by car after convenience store theft*,  
Rochester First (Jan. 10, 2023, 12:40 PM),  
<https://www.rochesterfirst.com/crime/police/watch-rpd-officer-dragged-by-car-after-convenience-store-theft/>.



1 officer approached the suspect's car, the suspect attempted to drive away and the  
 2 officer, who became trapped between the door and frame of the car, "was dragged  
 3 across the parking lot."<sup>24</sup> Both the suspect and officer were hospitalized for separate  
 4 injuries following the incident.<sup>25</sup> Police later confirmed that the vehicle involved was  
 5 a stolen Hyundai Sonata.<sup>26</sup>

6 38. A substantial risk to public safety also arises in the event that the would-  
 7 be thief is confronted in the act. In January 2023, a Cleveland man followed a  
 8 Hyundai Sonata that struck his car mirror and did not stop. The driver and passenger  
 9 of the Hyundai got out with guns and began shooting at him.<sup>27</sup> Police found nine  
 10 bullet casings in the street and bullet holes in the front window of a nearby home  
 11 and in a car parked on the street.<sup>28</sup> About one hour later, the same Hyundai, which  
 12 had been reported stolen days earlier, was involved in a drive-by shooting.<sup>29</sup>

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17 <sup>24</sup> *Id.*

18 <sup>25</sup> *Id.*

19 <sup>26</sup> Jennifer Lewke, *RPD releases video showing officer being dragged by car in*  
 20 *December*, News10 NBC (Jan. 10, 2023, 2:22 PM), [https://www.whec.com/top-](https://www.whec.com/top-news/rpd-parolee-accused-of-dragging-officer-with-car-stole-two-packs-of-beer-and-had-six-outstanding-warrants/)  
[news/rpd-parolee-accused-of-dragging-officer-with-car-stole-two-packs-of-beer-](https://www.whec.com/top-news/rpd-parolee-accused-of-dragging-officer-with-car-stole-two-packs-of-beer-and-had-six-outstanding-warrants/)  
[and-had-six-outstanding-warrants/](https://www.whec.com/top-news/rpd-parolee-accused-of-dragging-officer-with-car-stole-two-packs-of-beer-and-had-six-outstanding-warrants/).

21 <sup>27</sup> Cory Shaffer, *Teens Lodge stolen Hyundai in Burger King drive-thru on two*  
 22 *wheels after owner confronts them*, CLEVELAND.COM, (Feb. 3, 2023, 5:03 PM),  
[https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-](https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-burger-king-drive-thru-on-two-wheels-after-owner-confronts-them.html)  
[burger-king-drive-thru-on-two-wheels-after-owner-confronts-them.html](https://www.cleveland.com/court-justice/2023/02/teens-lodge-stolen-hyundai-in-burger-king-drive-thru-on-two-wheels-after-owner-confronts-them.html).

23 <sup>28</sup> *Id.*

<sup>29</sup> *Id.*

1           39. This risk was also tragically demonstrated in Wauwatosa, Wisconsin,  
2 when a woman who attempted to prevent the theft of a Hyundai was killed at the  
3 scene.<sup>30</sup>

4           40. Car thefts and reckless driving also create a substantial risk of physical  
5 harm to pedestrian bystanders. On February 8, 2023, a stolen Hyundai involved in a  
6 high-speed chase in Baltimore crashed into another car and a 54-year-old  
7 pedestrian.<sup>31</sup> Both cars careened into a nearby building, which collapsed on top of  
8 the vehicles and the pedestrian.<sup>32</sup> The pedestrian was pronounced dead at the scene,  
9 and five occupants of the two cars were injured.<sup>33</sup>



19 <sup>30</sup> Michael Fiore, *13-year-old charged as adult in deadly Wauwatosa hit-and-run*,  
20 CBS 58 (Oct. 20, 2021, 10:06 PM), [https://www.cbs58.com/news/13-year-old-  
charged-as-adult-in-deadly-wauwatosa-hit-and-run](https://www.cbs58.com/news/13-year-old-charged-as-adult-in-deadly-wauwatosa-hit-and-run).

21 <sup>31</sup> Dan Belson, *Footage shows fatal crash into Baltimore building, collapse*  
22 *following police pursuit of stolen car*, THE BALTIMORE SUN (Mar 2, 2023, 8:29  
PM), [https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-  
footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html](https://www.baltimoresun.com/news/crime/bs-md-ci-cr-oag-crash-collapse-footage-20230303-rbd6j3tokfhkjduh3oktmo6ow4-story.html).

23 <sup>32</sup> *Id.*

<sup>33</sup> *Id.*

1           41. Yonkers has experienced an especially high rate of Hyundai and Kia  
2 vehicle thefts and has been forced to respond, incurring significant costs, including  
3 expending extra police time and resources taking reports and collecting evidence;  
4 processing and assisting with the prosecution of offenders; and educating the public  
5 about this threat to public safety.

6           42. As a result of the skyrocketing rate of theft of Hyundai and Kia vehicles  
7 nationwide, at least two major insurance companies are refusing to write policies for  
8 certain Hyundai and Kia models in major cities, thereby increasing the potential  
9 number of uninsured motorists on the road.<sup>34</sup>

10           43. To date, Defendants' responses have shown a continued prioritization  
11 of profits over safety. Both companies have refused to implement a recall to install  
12 engine immobilizers in the Susceptible Vehicles, initially only offering wheel locks  
13 for municipalities to distribute.<sup>35</sup> Unfortunately, the wheel locks are not effective;  
14

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15 <sup>34</sup> Peter Valdes-Dapena, *Some auto insurers are refusing to cover certain Hyundai*  
16 *and Kia models*, CNN (Jan. 28, 2023, 3:06 PM),  
17 [https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-](https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html)  
18 [kia/index.html](https://www.cnn.com/2023/01/27/business/progressive-state-farm-hyundai-kia/index.html); see also Robert Higgs, *Progressive, State Farm halt new car*  
19 *insurance policies for high theft models of Kia and Hyundai*, CLEVELAND.COM  
20 (Jan. 31, 2023, 1:06 PM),  
21 [https://www.cleveland.com/business/2023/01/progressive-state-farm-halt-new-car-](https://www.cleveland.com/business/2023/01/progressive-state-farm-halt-new-car-insurance-policies-for-high-theft-models-of-kia-and-hyundai.html)  
22 [insurance-policies-for-high-theft-models-of-kia-and-hyundai.html](https://www.cleveland.com/business/2023/01/progressive-state-farm-halt-new-car-insurance-policies-for-high-theft-models-of-kia-and-hyundai.html); see also Joe  
23 Hernandez, *Dealers still sell Hyundais and Kias vulnerable to theft, but insurance*  
*is hard to get*, NPR (May 4, 2023, 5:00 AM),  
[https://www.npr.org/2023/05/04/1173048646/hyundai-kia-car-theft-tiktok-](https://www.npr.org/2023/05/04/1173048646/hyundai-kia-car-theft-tiktok-insurance-dealerships)  
[insurance-dealerships](https://www.npr.org/2023/05/04/1173048646/hyundai-kia-car-theft-tiktok-insurance-dealerships) (discussing how “a dozen” insurance companies denied  
coverage for the new owner of 2020 Kia Forte).

<sup>35</sup> Elliot Hughes, *Kia, Hyundai will make security feature standard on new vehicles*  
*and distribute free steering wheel locks after surge of thefts*, MILWAUKEE JOURNAL  
SENTINEL (July 19, 2021, 10:16 AM),

1 Susceptible Vehicles with wheel locks in use have still been stolen and, in some  
2 instances, used in connection with other crimes, including shootings.<sup>36</sup>

3 44. More recently, Hyundai has begun rolling out a “software update”  
4 rather than installing immobilizers.<sup>37</sup> Kia has planned a similar software update, yet  
5 this software-only approach is too little, too late, and many of the Susceptible  
6 Vehicles will not even be included in the update.<sup>38</sup>

7 45. As highlighted in the multistate letter sent on behalf of eighteen  
8 Attorneys General, Hyundai acknowledged that some of the affected vehicles cannot  
9 be updated, and Kia “confirmed that some unspecified number of affected vehicles  
10 cannot receive the updates.”<sup>39</sup>

11  
12  
13  
14 [https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-free-steering-wheel-locks-through-end-year/7963950002/.](https://www.jsonline.com/story/news/crime/2021/07/19/kia-hyundai-handing-out-free-steering-wheel-locks-through-end-year/7963950002/)

15 <sup>36</sup> Ashley Sears, *Milwaukee woman’s Kia stolen twice, had steering wheel lock*,  
16 FOX6NOW.COM (Sept. 28, 2021), [https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice; see also](https://www.fox6now.com/news/milwaukee-womans-kia-stolen-twice; see also David Rose, ‘B****, I swear, b****, I’m gonna crack your phone:’ Drive-by shooting suspect says to Tacoma woman, FOX13 SEATTLE (Jan. 25, 2023), https://www.q13fox.com/news/b-i-swear-b-im-gonna-crack-your-phone-drive-by-shooting-suspect-says-to-tacoma-woman; and Boy, 15, fighting for his life after shooting involving stolen Kia in Minneapolis, CBS MINNESOTA (Apr. 6, 2023), https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/) David Rose, ‘B\*\*\*\*, I swear, b\*\*\*\*, I’m gonna crack your phone:’ Drive-by shooting suspect says to Tacoma woman, FOX13 SEATTLE (Jan. 25, 2023), <https://www.q13fox.com/news/b-i-swear-b-im-gonna-crack-your-phone-drive-by-shooting-suspect-says-to-tacoma-woman>; and Boy, 15, fighting for his life after shooting involving stolen Kia in Minneapolis, CBS MINNESOTA (Apr. 6, 2023), [https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/.](https://www.cbsnews.com/minnesota/video/boy-15-fighting-for-his-life-after-shooting-involving-stolen-kia-in-minneapolis/)

20 <sup>37</sup>Hyundai and Kia Launch Service Campaign to Prevent Theft of Millions of  
21 Vehicles Targeted by Social Media Challenge, NHTSA (Feb. 14, 2023),  
22 [https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft.](https://www.nhtsa.gov/press-releases/hyundai-kia-campaign-prevent-vehicle-theft)

23 <sup>38</sup> See Zac Palmer, *Hyundai launches software update to fix some of 4 million vehicles at risk of theft*, Yahoo! (Feb. 14, 2023), [https://autos.yahoo.com/hyundai-launches-software-fix-4-155800221.html.](https://autos.yahoo.com/hyundai-launches-software-fix-4-155800221.html)

<sup>39</sup> Letter from Attorneys General to NHTSA at 6.

1           46. For vehicles not covered by the update, Defendants are offering nothing  
 2 more than wheel locks, or rebates for already purchased wheel locks.<sup>40</sup> As noted by  
 3 multiple Attorneys General, steering wheel locks “still would not correct the  
 4 underlying safety flaw . . . and . . . would impermissibly shift the responsibility for  
 5 fixing this problem from the company to the individual vehicle owners.”<sup>41</sup>

6           47. Additionally, the Attorneys General have identified two other primary  
 7 issues with the software update. First, “not all eligible vehicles can receive the  
 8 updates immediately”—at least two million vehicles with the “starting system flaw”  
 9 are still awaiting eligibility for the update.<sup>42</sup> Meanwhile, these vehicles “will remain  
 10 on the road, vulnerable to theft and posing a threat to public safety.”<sup>43</sup> Second, the  
 11 Defendants’ “voluntary service campaign” does not prompt certain “regulatory  
 12 requirements and oversight and instead places additional burdens on individual  
 13 vehicle owners.”<sup>44</sup>

14           48. Upon information and belief, rather than install an actual immobilizer,  
 15 the software update will merely double the length of the theft alarm sound and add  
 16

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17 <sup>40</sup> See Palmer, *supra* note 38.

18 <sup>41</sup> Letter from Attorneys General to NHTSA at 6.

19 <sup>42</sup> *Id.* at 6–7. Additionally, media outlets report that customers are “having a  
 20 difficult time getting through” to customer service representatives for Hyundai and  
 21 Kia to inquire about the software update and their vehicle’s eligibility. See  
 22 *Hyundai, Kia owners frustrated by customer call center wait times to get security*  
 23 *upgrade*, WHIO TV 7 (Feb. 16, 2023, 8:47 PM),  
<https://www.whio.com/news/crime-and-law/hyundai-kia-owners-frustrated-by-customer-call-center-wait-times-get-security-update/SXRBN3OTHVC37OLC3735Y755ZU/>.

<sup>43</sup> Letter from Attorneys General to NHTSA at 7.

<sup>44</sup> *Id.*

1 a new logic check to the vehicles' on-board computers that is intended to prevent the  
 2 Engine Control Unit from allowing the engine to start and run if the key fob is not  
 3 used to unlock the doors. This software-based approach is a late half-measure at best  
 4 and already significant flaws have been uncovered.<sup>45</sup> There have been numerous  
 5 reports of Kia and Hyundai vehicles being stolen after receiving the software update,  
 6 and Kia and Hyundai have identified scenarios where the software logic fails.<sup>46</sup>  
 7 While less expensive than installing engine immobilizers, those savings come at the  
 8 expense of efficacy and usability, not to mention public safety.

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10 <sup>45</sup> See Michelle Nicks, *Cleveland woman devastated after new anti-theft device on*  
 11 *her Hyundai fails to stop thieves from causing damage*, CLEVELAND19.COM (March  
 12 17, 2023, 8:07 PM), <https://www.cleveland19.com/2023/03/18/cleveland-woman-devastated-after-new-anti-theft-device-her-hyundai-fails-stop-thieves-causing-damage/>. See also Devin Bartolotta, *First case of Kia stolen after security software*  
 13 *upgrade reported in New Orleans*, WWLTV (May 15, 2023, 10:16 PM),  
 14 <https://www.wwltv.com/article/news/crime/first-case-kia-stolen-after-security-software-upgrade-reported-new-orleans-sweeps-crime-local-news/289-c789eed8-bc46-4e0a-83fb-7489563300ce> (discussing the theft of a 2020 Kia Optima  
 15 approximately 15 hours after the same vehicle received the software update from a  
 16 Kia dealership). Additional anecdotes suggest that the update is not reliable. See  
 17 Jsmith4523, Reddit (Feb. 22, 2023, 4:52 PM),  
 18 [https://www.reddit.com/r/Hyundai/comments/119jlts/well\\_it\\_happened\\_my\\_17\\_elantra\\_se\\_was\\_stolen\\_and/?utm\\_source=share&utm\\_medium=ios\\_app&utm\\_name=iossmf](https://www.reddit.com/r/Hyundai/comments/119jlts/well_it_happened_my_17_elantra_se_was_stolen_and/?utm_source=share&utm_medium=ios_app&utm_name=iossmf); MaximumLongjumping31, Reddit (Mar. 3, 2023, 5:12 AM),  
 19 [https://www.reddit.com/r/Hyundai/comments/11h0frt/alarm\\_tsb\\_computer\\_upgrade\\_my\\_terrible\\_experience/](https://www.reddit.com/r/Hyundai/comments/11h0frt/alarm_tsb_computer_upgrade_my_terrible_experience/).

20 <sup>46</sup> Carly Shaffner, *Kia, Hyundai anti-theft software fixes a work in progress*,  
 21 Automotive News (June 2, 2023, 8:00 AM),  
 22 <https://www.autonews.com/regulation-safety/kia-hyundai-antitheft-software-fix-needs-fixes> (discussing a February 2023 service bulletin issued from Kia to its  
 23 dealers regarding a software compatibility issue for Kia vehicles equipped with  
 remote start accessories; another bulletin issued from Kia in late-May 2023  
 acknowledged that “the problem has not been remedied”).



1           49. The rollout of the software update has just begun, far too late to prevent  
2 the nuisance that the Susceptible Vehicles created and the expenses that Yonkers has  
3 incurred and continues to incur. The update's efficacy has not been proven in the  
4 real world, and in fact Susceptible Vehicles have already been stolen after receiving  
5 the update. No one knows how many consumers will even opt to get the update.<sup>47</sup>  
6 And, as mentioned above, there are facial defects with this approach, including that  
7 approximately two million of the Susceptible Vehicles cannot "receive the updates  
8 immediately."<sup>48</sup>

9           50. In the three months since the software update began rolling out, data  
10 gathered from the Associated Press "shows that the number of Hyundai and Kia  
11 thefts is still growing despite the companies' efforts to fix the glitch, which makes  
12 8.3 million vehicles relatively easy targets for thieves."<sup>49</sup>

13           51. What's more, the work-around substantially reduces the usability of the  
14 vehicles. This logic could be triggered by letting a passenger out of a car to run an  
15 errand and then starting the car again. In addition, owners of the Susceptible Vehicles  
16 have already experienced issues with after-market remote start systems, rendering  
17 the vehicles functionally inoperable. As one owner recently posted:

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19 <sup>47</sup> See Letter from Attorneys General to NHTSA at 7 (noting that "voluntary  
20 service campaigns like the ones announced by Hyundai and Kia are distinct from  
21 recalls and offer insufficient assurances that vehicles with the starting-system flaw  
will be corrected or taken off the road in a timely manner").

22 <sup>48</sup> *Id.* at 6.

23 <sup>49</sup> Tom Krisher, *Hyundai and Kia thefts keep rising despite security fix*,  
ASSOCIATED PRESS (May 9, 2023), <https://apnews.com/article/hyundai-kia-tiktok-theft-stolen-8e0a353d24be0e7bce36e34c5e4dac51>.

1 “I have the update. I also have an after market remote start.  
 2 The remote start will set off my car alarm. You can turn  
 3 the alarm off, but it will beep periodically and the  
 headlights flash until you turn the vehicle off.”<sup>50</sup>

4 52. Prior to this software update, Hyundai callously turned this crisis of its  
 5 own making into a source of revenue, selling security kits for \$170, plus the cost of  
 6 installation.<sup>51</sup> Defendants could have, and should have, initially included a fob-  
 7 integrated engine immobilizer, consistent with the industry standard. Even after the  
 8 cars were sold, Defendants could have implemented a mandatory recall. Instead,  
 9 Hyundai chose to make money off of a crime wave it caused.

10 53. By electing profits over safety and deviating from industry standard  
 11 norms by not including engine immobilizers as a standard safety feature, Defendants  
 12 created and maintained a public nuisance.

### 13 **C. Measures to Prevent Vehicle Theft Have Existed for Over a** 14 **Century**

15 54. Since the dawn of gasoline-powered automobiles at the close of the  
 16 nineteenth century, consumers have needed effective ways to keep their vehicles  
 17 from being stolen. Thus, efforts to prevent theft or unauthorized access to  
 18 automobiles have tracked vehicle development. In 1919, St. George Evans and E. B.

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 20  
 21 <sup>50</sup> Fungiinterezt, Reddit (Feb. 15, 2023, 7:05 AM),  
[https://www.reddit.com/r/kia/comments/11303m4/hyundai\\_and\\_kia\\_release\\_software\\_update\\_to/?sort=new](https://www.reddit.com/r/kia/comments/11303m4/hyundai_and_kia_release_software_update_to/?sort=new).

22 <sup>51</sup> Taryn Phaneuf, *Own a Kia or Hyundai? Here's Why Your Insurance Rates*  
 23 *Could Go Up*, NERD WALLET (Jan. 26, 2023),  
<https://www.nerdwallet.com/article/insurance/kia-hyundai-theft>.



1 Birkenbeuel invented the first formation of an electric immobilizer/vehicle security  
2 system.<sup>52</sup>

3 55. Labeled the “Automobile-Theft Preventer” the purpose of Evans and  
4 Birkenbeuel’s invention was relatively straightforward: “to provide a means for  
5 automatically signaling an attempt to move an automobile by unauthorized persons;  
6 and to provide a means for locking the electric circuit open, in which case it will be  
7 impossible to move the car by its own power.”<sup>53</sup>

8 56. Evans and Birkenbeuel’s immobilizer/alarm system consisted of a  
9 three-by-three switch panel that connected to the car’s battery, horn, and ignition.  
10 Upon exiting his vehicle, a driver could turn a few switches on the panel to different  
11 positions that, until released, would divert electricity to the horn instead of the  
12 ignition should an unauthorized user attempt to start the vehicle.

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23 <sup>52</sup> U.S. Patent No. 1,300,150 (issued Apr. 8, 1919).

<sup>53</sup> *Id.* at ¶¶ 14–20.



58. As time passed and technology advanced, the United States pursued further efforts to promulgate vehicle safety standards.

24

1 traffic safety standards.<sup>54</sup> Administration of the Safety Act was overseen by the  
 2 newly created Department of Transportation through its sub-agency: NHTSA, f/k/a/  
 3 the National Traffic Safety Bureau.

4 60. Pursuant to its statutory authority under the Safety Act, NHTSA  
 5 promulgated numerous federal motor vehicle safety standards (“FMVSS”). Among  
 6 these standards, FMVSS 114<sup>55</sup> requires minimum theft-protection standards for  
 7 nearly all passenger vehicles in the United States:

8 S1. *Scope*. This standard specifies vehicle performance  
 9 requirements intended to reduce the incident of crashes  
 10 resulting from theft and accidental rollaway of motor  
 vehicles

11 S2. *Purpose*. The purpose of this standard is to decrease  
 12 the likelihood that a vehicle is stolen, or accidentally set in  
 motion.

13 S3. *Application*. This standard applies to all passenger  
 14 cars, and to trucks and multipurpose passenger vehicles  
 15 with GVWR of 4,536 kilograms (10,000 pounds) or less.  
 . . .

16 S5.1 *Theft Protection*.

17 S5.1.1 Each vehicle must have a starting system which,  
 18 whenever the key is removed from the starting system  
 prevents:

- 19 (a) The normal activation of the vehicle’s engine or  
 motor; and
- 20 (b) Either steering, or forward self-mobility, of the  
 vehicle, or both.

21 \_\_\_\_\_  
 22 <sup>54</sup> National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, 80 Stat.  
 718.

23 <sup>55</sup> Standard No. 114; Theft protection and rollaway prevention, 49 C.F.R. §  
 571.114.

1  
2 . . .

3 S5.2.2 Except as specified in S5.2.4, the vehicle must be  
4 designed such that the transmission or gear selection  
5 control cannot move from the “park” position, unless the  
6 key is in the starting system.

6 61. The main motivation for creating FMVSS 114 was NHTSA’s  
7 recognition “that stolen cars constitute a major hazard to life and limb on the  
8 highways. The evidence shows that stolen cars are far more likely to cause  
9 unreasonable risk of accident, personal injury, and death than those which are driven  
10 by authorized individuals.”<sup>56</sup>

11 62. As early as 1966, studies showed “there were an estimated 94,000  
12 stolen cars involved in accidents”—with “18,000 of these accidents result[ing] in  
13 injury to one or more people.”<sup>57</sup> Accordingly, NHTSA recognized that “a reduction  
14 of the incident of auto theft would make a substantial contribution to motor vehicle  
15 safety” and “protect the many innocent members of the public who are killed and  
16 injured by stolen cars each year.”<sup>58</sup> To address this safety risk, which is largely tied  
17 to “car thieves who could bypass the ignition lock . . . the agency decided to require  
18 a device, which would prevent either self-mobility or steering even if the ignition  
19 lock were bypassed.”<sup>59</sup>

20  
21 <sup>56</sup> Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33  
22 Fed. Reg. 83, 6471 (April 27, 1968).

23 <sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Federal Motor Vehicle Safety Standards; Theft Protection, 71 Fed. Reg. 17,753  
(Apr. 7, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-04-07/pdf/06->

63. An engine immobilizer satisfies this requirement, “because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system.”<sup>60</sup> The proposed software update does not appear to satisfy this requirement—as it is not linked to an attempt to start the vehicle without the correct key—and the absence of *any* system not only violates this standard, it created the public nuisance of rampant car theft in Yonkers.

**D. The Widespread Adoption of Modern Engine Immobilizers as an Even More Effective Vehicle Theft Deterrent**

64. In the late 1980s and early 1990s, vehicle theft increased dramatically in the United States.<sup>61</sup> The common method for stealing a car involved bypassing the motor’s ignition switch, otherwise known as “hotwiring.” The below graph illustrates the dramatic rise in car thefts during this time period.<sup>62</sup>

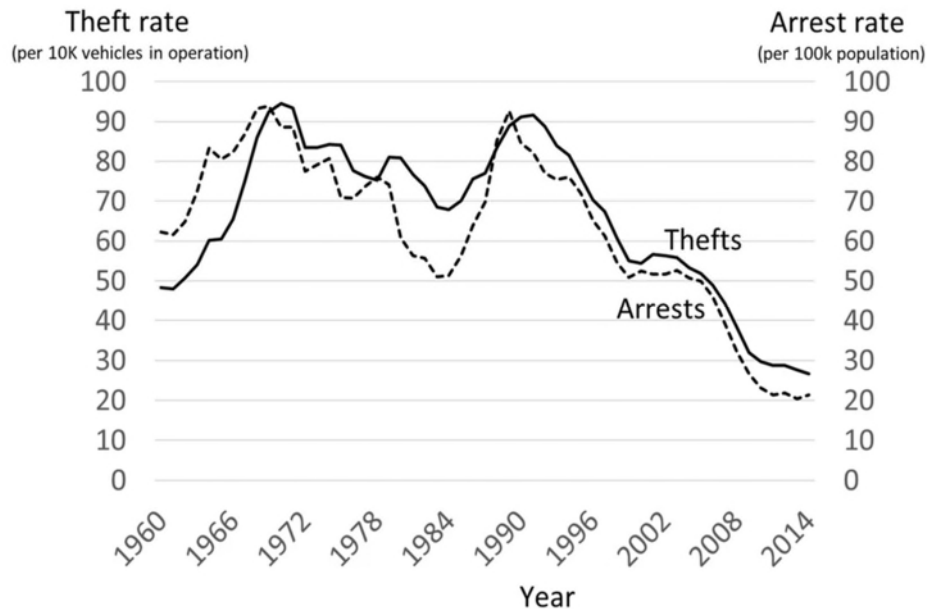
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[3358.pdf](#); *see also* Motor Vehicle Safety Standard No. 114; Theft Protection; Passenger Cars, 33 Fed. Reg. 6,471 (Apr. 27, 1968).

<sup>60</sup> Jacqueline Glassman, *NHTSA Interpretation GF005229-2* (Sept. 24, 2004), <https://www.nhtsa.gov/interpretations/gf005229-2#:~:text=This%20responds%20to%20your%20letter,114%2C%20Theft%20Protection>.

<sup>61</sup> Anthony Dixon & Graham Farrell, *Age-period-cohort effects in half a century of motor vehicle theft in the United States*, 9 CRIME SCIENCE 17, 1, 3 (2020), <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00126-5>.

<sup>62</sup> *Id.* at 2.



65. To respond to this growing problem, manufacturers began installing passive vehicle immobilizers, which were patented no later than 1993.<sup>63</sup> Unlike Evans and Birkenbeuel’s invention nearly seventy-five years prior, the vehicle immobilizer would render the engine operable only “if the correct key having coded information is used[,]” rather than relying on concealed switches or memorizing keypad combinations.<sup>64</sup>

66. In essence, the vehicle immobilizers of the 1990s worked by checking the “fingerprint” of a car key based on electronic codes the key sends to the vehicle.

67. Although the mechanism behind the vehicle immobilizer was more intricate than the original 1919 invention, the overall purpose remained the same: “to make the vehicle more difficult to steal.”<sup>65</sup>

<sup>63</sup> Int’l Patent Publication No. WO 93/13968 (filed Jan. 7, 1993).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

1           68. The invention proved successful and, less than five years later, the  
2 European Union mandated that all new passenger cars from 1998 onward be  
3 equipped with an electronic engine immobilizer.<sup>66</sup> Similar mandates soon followed  
4 in Australia, New Zealand, and Canada.

5           69. As engine immobilizers became the industry-standard among  
6 manufacturers, at least one study in the Netherlands suggested that immobilizers  
7 “lowered the overall rate of car theft on average by about 40 percent during  
8 1995-2008.”<sup>67</sup>

9                   **E. Defendants’ Deviation from the Industry Standard**

10           70. At the turn of the 21st century, automatic engine immobilizers were  
11 considered quintessential anti-theft technology by the majority of car manufacturers  
12 in America, with the exception of Hyundai and Kia.

13           71. Studies by the Highway Loss Data Institute (“HLDI”) showed “that  
14 vehicle theft losses decreased significantly after factory-installed passive  
15 immobilizing antitheft devices were introduced.”<sup>68</sup> Specifically, HLDI studies  
16 between 1996 and 2013 all showed decreases in theft losses for vehicles with engine  
17 immobilizers studied in those years, including General Motors, BMW, Ford, and  
18

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19           <sup>66</sup> Commission Directive No. 95/96/EC, 1995 O.J. (L286) 1 (amending Council  
20 Directive 74/61/EEC to require the installation of immobilizers and alarm systems  
in motor vehicles beginning in October 1998).

21           <sup>67</sup> Jan C. van Ours & Ben Vollaard, *The Engine Immobiliser: A Non-Starter for*  
22 *Car Thieves*, 126 THE ECONOMIC JOURNAL 593, 1264, 1283 (June 2013).

23           <sup>68</sup> *Hyundai and Kia theft losses*, 38 HLDI BULLETIN 28 (Dec. 2021),  
[https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi\\_bulletin\\_38-28.pdf](https://www.iihs.org/media/0e14ba17-a3c2-4375-8e66-081df9101ed2/opm7QA/HLDI%20Research/Bulletins/hldi_bulletin_38-28.pdf).

1 Nissan.<sup>69</sup> A 2013 HLDI study “found that thieves were sometimes targeting the older  
 2 model years of a vehicle series without immobilizers, such as the Honda Civic and  
 3 Honda Accord.”<sup>70</sup>

4 72. Despite decades of research and findings that immobilizers  
 5 significantly reduced vehicle theft and the consequential public safety risks, “only  
 6 26 percent of Hyundai and Kia” 2015 vehicle models had “passive immobilizers as  
 7 standard equipment, compared with 96 percent of other manufacturers.”<sup>71</sup>

8 73. The staggeringly low percentage of Hyundai and Kia vehicles with  
 9 immobilizers is especially concerning given that, during this same time period,  
 10 Defendants were installing immobilizers in 100% of their models for sale in  
 11 European and Canadian markets, in compliance with applicable laws there.<sup>72</sup>

12 74. Nor are Defendants unfamiliar with the benefits of installing  
 13 immobilizers in the American market. In March 2007, Hyundai requested an  
 14 exemption from particular NHTSA vehicle theft prevention standards for its 2008  
 15 Hyundai Azera line “based on the installation of an antitheft device” for the vehicle  
 16 line that would be “at least as effective as th[e] GM and Ford [immobilizer] devices”  
 17  
 18

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19 <sup>69</sup> *Id.*

20 <sup>70</sup> *Id.*

21 <sup>71</sup> *Id.*

22 <sup>72</sup> Hyundai first began exporting its cars to parts of Europe, the United Kingdom,  
 23 and Canada between 1978 and 1984. *See Over 50 years of progress: the history of Hyundai* HYUNDAI.NEWS (Apr. 6, 2019),  
<https://www.hyundai.news/eu/articles/press-releases/over-50-years-of-progress-the-history-of-hyundai.html>. Similarly, Kia vehicles were introduced into  
 European and Canadian markets in the 1990s.



1 in reducing vehicle theft.<sup>73</sup> Yet, until the last year or so, Hyundai and Kia only  
 2 offered immobilizers in a few, more expensive, models. This decision only  
 3 compounds the harms on low-income communities.<sup>74</sup> Those without resources to  
 4 afford such models are more likely to live in areas with higher crime rates and are  
 5 likely less able to pay for alternative transportation or for the cost of repairing a  
 6 recovered vehicle.

7 75. In September 2022, the HLDI found that Hyundais and Kias are stolen  
 8 at nearly twice the rate of other vehicles in the automobile industry. Specifically,  
 9 “Hyundais and Kias without immobilizers had a vehicle theft claim rate of 2.18 per  
 10 1,000 insured vehicle years” while the remainder of the industry, *combined*, had a  
 11 theft claim rate of 1.21.<sup>75</sup>

12 76. Based on the above, Defendants’ decision not to install the simple and  
 13 highly effective immobilizer in the Susceptible Vehicles between 2011 and 2022, in  
 14 contrast to the approximately 96% of all other car manufacturers that did install an  
 15

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16 <sup>73</sup> Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-  
 17 Kia America Technical Center, 72 Fed. Reg. 39,662 (July 19, 2007); *see also*  
 18 Petition for Exemption From the Vehicle Theft Prevention Standard; Hyundai-Kia  
 19 America Technical Center, 75 Fed. Reg. 1,447 (Jan. 11, 2010) (NHTSA notice  
 granting an identical exemption for the Kia Amanti vehicle line beginning in  
 model year 2009 based on Defendant Kia’s representation that the immobilizer  
 installation for that specific model should substantially reduce theft rates).

20 <sup>74</sup> Tom Krisher, *Thieves key on hack that leaves Hyundai, Kia cars vulnerable*, AP  
 21 News (Sept. 21, 2022), <https://apnews.com/article/social-media-milwaukee-theft-ecd3be407c1b7cb725ae607b8d86bcdf> (noting that “[m]any of the vulnerable  
 22 Hyundais and Kias are often bought by lower-income people” because, as stated by  
 23 HLDI Senior VP Matt Moore, those cars “are relatively inexpensive vehicles when  
 purchased new”).

<sup>75</sup> *Id.* An insured vehicle year is equal to one vehicle insured for one year.

1 immobilizer, has led to a reasonably foreseeable car theft epidemic that is plaguing  
2 Yonkers.

## 3 **V. CAUSES OF ACTION**

### 4 **COUNT ONE — COMMON LAW PUBLIC NUISANCE**

5 77. The City incorporates each preceding paragraph as though fully set  
6 forth herein.

7 78. Defendants, through their designing, manufacturing, and distributing of  
8 automobiles that are dangerously susceptible to theft, have created, contributed to,  
9 and maintained a public nuisance that substantially interferes with rights common to  
10 the general public.

11 79. A public nuisance “consists of conduct or omissions which offend,  
12 interfere with or cause damage to the public in the exercise of rights common to all,  
13 in a manner such as to offend public morals, interfere with use by the public of a  
14 public place or endanger or injure the property, health, safety or comfort of a  
15 considerable number of persons.” *Copart Indus., Inc. v. Consol. Edison Co. of New*  
16 *York, Inc.*, 362 N.E.2d 968, 971 (1977) (internal citations omitted).

17 80. Defendants’ conduct has interfered, and continues to interfere, with the  
18 use by the public of public streets and sidewalks in Yonkers, and has endangered the  
19 safety, health, and comfort of the general public in the City.

20 81. In addition, Defendants’ conduct has undermined law enforcement  
21 efforts to deter vehicle theft and has otherwise diverted scarce law enforcement  
22 resources.

1           82. At all relevant times, Defendants have been the manufacturers,  
2 marketers, and/or distributors of the Susceptible Vehicles being stolen at record rates  
3 that are, at times, being used in the commission of violent crimes in the State of New  
4 York and the City.

5           83. At all times relevant to this litigation, Defendants knew or had reason  
6 to know of the hazards and dangers of foregoing installation of engine immobilizers  
7 in the Susceptible Vehicles and specifically the increased risk of vehicle theft and  
8 public harm. Defendants knew or had reason to know that the installation of engine  
9 immobilizers successfully decreased the rate of car theft by as much as 40%.  
10 Defendants also knew or had reason to know that the installation of immobilizers in  
11 their own vehicles has considerable deterrent effects on the rate of car theft.

12           84. Defendants know that their conduct has caused an increase in vehicle  
13 theft that has had and will continue to have a detrimental effect on the safety, welfare,  
14 peace, comfort, and convenience of the general public in the City.

15           85. Defendants, through their business practices, contribute to a significant  
16 increase in vehicle theft, reckless driving, and the use of their vehicles in the  
17 commission of other crimes in Yonkers, thus endangering the safety and health of  
18 considerable numbers of Yonkers residents, depriving Yonkers residents of the  
19 peaceful use of the public streets and sidewalks, undermining law enforcement  
20 efforts, increasing law enforcement costs and diverting law enforcement resources,  
21 and interfering with commerce, travel, and the quality of daily life in Yonkers.

1           86. Accordingly, Defendants each substantially interfere with rights  
2 common to all and cause, contribute to, and/or maintain a public nuisance in  
3 Yonkers.

4           87. As a result of Defendants' conduct, the City has suffered and will  
5 continue to suffer economic damages, including significant expenditures for police  
6 and other services. The City will continue to incur economic losses until the nuisance  
7 is abated. These damages are particular to the City and are different in kind to the  
8 harms suffered by New York residents at large.

9           88. Defendants' misconduct alleged in this case does not concern a discrete  
10 event or discrete emergency of the sort a political subdivision would reasonably  
11 expect to occur and is not part of the normal and expected costs of a local  
12 government's existence. The City alleges wrongful acts which are neither discrete  
13 nor of the sort a local government can reasonably expect to occur.

14           89. Yonkers has incurred, and will continue to incur, expenditures over and  
15 above its ordinary public services due to the public nuisance created by Defendants'  
16 actions.

17           90. Yonkers requests an order providing for abatement of the public  
18 nuisance that Defendants have created or assisted in the creation of, compensation  
19 for the economic losses suffered as a result of the nuisance, and injunctive relief.

20                           **COUNT TWO — NEGLIGENCE**

21           91. The City of Yonkers incorporates each preceding paragraph as though  
22 set forth fully herein.  
23

1           92. At all times relevant to this litigation, Defendants had a duty to act as a  
2 reasonably careful person would act under the circumstances in the design, research,  
3 manufacture, and distribution of Defendants' products, including the duty to take all  
4 reasonable steps necessary to prevent the manufacture and/or sale of a product that  
5 was so easy to steal.

6           93. Defendants owed and continue to owe the City a duty not to expose the  
7 City to an unreasonable risk of harm.

8           94. Defendants' duties were preexisting.

9           95. At all times relevant to this litigation, Defendants knew or, in the  
10 exercise of reasonable care, should have known of the hazards and dangers of  
11 foregoing installation of engine immobilizers in the Susceptible Vehicles and  
12 specifically, the increased risk of vehicle theft and public harm.

13           96. Accordingly, at all times relevant to this litigation, Defendants knew or,  
14 in the exercise of reasonable care, should have known that the omission of an engine  
15 immobilizer in the Susceptible Vehicles could cause Yonkers's injuries and thus  
16 created a dangerous and unreasonable risk of injury to Yonkers. Defendants were  
17 therefore in the best position to protect the City against the foreseeable rise in the  
18 theft of Susceptible Vehicles.

19           97. At all times relevant to this litigation, Defendants knew or had reason  
20 to know that the omission of an engine immobilizer in the Susceptible Vehicles  
21 could cause the City's injuries, as FMVSS 114 requires automobiles to have a  
22 starting system which, whenever the key is removed from the starting system,  
23 prevents "[e]ither steering, or forward self-mobility, of the vehicle, or both" and for

1 vehicles to be designed “such that the transmission or gear selection control cannot  
2 move from the ‘park’ position, unless the key is in the starting system.” As alleged  
3 *supra*, most carmakers in the United States satisfy FMVSS 114 through the use of  
4 an engine immobilizer.

5 98. As such, Defendants, by action and inaction, breached their duty and  
6 failed to exercise reasonable care, and failed to act as a reasonably prudent person  
7 and/or company would act under the same circumstances in the design, research,  
8 development, manufacture, testing, and distribution of their vehicles, in that  
9 Defendants manufactured and produced vehicles that fell below minimum, industry-  
10 standard security measures.

11 99. Defendants are in control of the design, research, manufacture, testing,  
12 and distribution of the vehicles they distributed to authorized dealerships in Yonkers.

13 100. Defendants knew and/or should have known that it was foreseeable that  
14 Yonkers would suffer injuries as a result of Defendants’ failure to exercise  
15 reasonable care in the manufacturing of Defendants’ vehicles, particularly given  
16 Defendants’ recognition as early as 2007 that engine immobilizers were an effective  
17 deterrent in preventing vehicle theft.

18 101. Defendants were negligent in failing to monitor and guard against third-  
19 party misconduct and enabled such misconduct.

20 102. Defendants acted unreasonably in light of the foreseeable result of their  
21 conduct, and Defendants’ negligence helped to and did produce, and was a factual  
22 and proximate cause, of the injuries, harm, and economic losses that Yonkers  
23 suffered and will continue to suffer.

1           103. Defendants' acts and omissions imposed an unreasonable risk of harm  
2 to others separately and/or combined with the negligent and/or criminal acts of third  
3 parties.

4           104. The City's injuries, harms, and economic losses would not have  
5 occurred absent Defendants' negligent conduct as described herein.

6           105. As a proximate result of Defendants' wrongful acts and omissions,  
7 Yonkers has been injured and suffered economic damages and will continue to incur  
8 expenses in the future, as described herein, including but not limited to expending,  
9 diverting, and increasing resources to retrieve stolen cars and/or address property  
10 damage on public roads within the City of Yonkers.

11           106. Defendants engaged in conduct, as described above, that constituted  
12 reckless disregard of the safety and health of the City's residents, being fully aware  
13 of the probable dangerous consequences of the conduct and deliberately failing to  
14 avoid those consequences.

15           107. Defendants' conduct constituting reckless and conscious disregard for  
16 public safety was committed and/or authorized by one or more officers, directors, or  
17 managing agents of Defendants, who acted on behalf of Defendants. Additionally,  
18 or in the alternative, one or more officers, directors or managing agents of  
19 Defendants knew of the conduct constituting reckless disregard for public safety and  
20 adopted or approved that conduct after it occurred.

21           108. Defendants' misconduct alleged in this case does not concern a discrete  
22 event or discrete emergency of the sort a political subdivision would reasonably  
23 expect to occur and is not part of the normal and expected costs of a local

1 government's existence. Yonkers alleges wrongful acts which are neither discrete  
2 nor of the sort a local government can reasonably expect to occur.

3 109. Yonkers has incurred, and will continue to incur, expenditures over and  
4 above its ordinary public services due to the negligence caused by Defendants'  
5 actions.

6 110. The tortious conduct of each Defendant was a substantial factor in  
7 producing harm to Yonkers.

8 111. Defendants' willful, knowing, and reckless conduct, constituting  
9 reckless disregard of Yonkers's rights, including the right to public safety, therefore  
10 warrants an award of aggravated or punitive damages.

11 112. Yonkers is without fault and injuries to the City and its residents would  
12 not have occurred in the ordinary course of events had Defendants used due care  
13 commensurate to the dangers involved in the manufacturing and distribution of their  
14 vehicles.

## 15 VI. PRAYER FOR RELIEF

16 113. Entering an Order that the conduct alleged herein constitutes a public  
17 nuisance under New York law;

18 114. Entering an Order that Defendants are jointly and severally liable;

19 115. Entering an Order requiring Defendants to abate the public nuisance  
20 described herein and to deter and/or prevent the resumption of such nuisance;

21 116. Enjoining Defendants from engaging in further actions causing or  
22 contributing to the public nuisance as described herein;

23 117. Awarding equitable relief to fund automobile theft prevention;



1 118. Awarding actual and compensatory damages;  
2 119. Awarding punitive damages;  
3 120. Awarding reasonable attorneys' fees and costs of suit;  
4 121. Awarding pre-judgment and post-judgment interest; and  
5 122. Awarding such other and further relief as the Court deems just and  
6 proper under the circumstances.

7 **VII. DEMAND FOR JURY TRIAL**

8 123. Yonkers hereby demands a trial by jury.

9  
10 RESPECTFULLY SUBMITTED this 30TH DAY OF JUNE, 2023.

11 CITY OF YONKERS

KELLER ROHRBACK L.L.P.

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